

IN THE SUPREME COURT OF MISSISSIPPI**NO. 2016-TS-00163****DR. WILLIE WILSON***Appellant*

v.

**DELBERT HOSEMAN, IN HIS CAPACITY AS
MISSISSIPPI SECRETARY OF STATE***Appellee***MEMORANDUM OF AUTHORITIES OF APPELLANT DR. WILLIE WILSON**

1. The matter is properly before the Supreme Court as an interlocutory appeal by permission under MRAP Rule 5(a) to protect Dr. Wilson from substantial and irreparable injury and to resolve an issue of general importance in the administration of justice. *American Electric v. Singarayar*, 530 So.2d 1319 (Miss.1988).

2. Dr. Wilson is entitled to seek relief though mandamus and injunction against the Secretary of State to order his name to be entered onto the electronic ballot since it is unrefuted that Dr. Wilson met all of the legal requirements under Miss. Code Ann. § 23-15-1093 to be place upon the ballot. A petition for writ of mandamus is a procedural tool a party can seek unilaterally to prompt officials to perform their required duties when they fail to act. *Hinds Cnty. Democratic Exec. Comm. v. Muirhead*, 259 So.2d 692, 695–695(Miss.1972); *In re Wilbourn*, 590 So. 2d 1381 (Miss. 1991) (“a court could, if necessary, compel by mandamus an election commission or executive committee to perform its statutory duty upon its failure to do so, or prohibit it by way of injunction or writ of prohibition from exceeding its statutory authority in some respect.”). Notably, Appellant’s counsel placed into the record of the preliminary injunction hearing a copy of his petition, including signatures of electors showing that Dr. Wilson obtained the required number of signatures.

3. The State Democratic Executive Committee is not a necessary party to this action. Party Chairman Ricky Cole wrote the Secretary of State on January 27, 2016, stating that Dr. Wilson met the requirements of Miss. Code Ann. § 23-15-1093 by timely filing with the Mississippi Democratic Party State Executive Committee his petition validly signed by a total of not less than five hundred (500) qualified electors of the state, and further requesting that the Secretary include Dr. Wilson's name on the official sample ballot for the Tuesday, March 8, 2016, Democratic Party Presidential Preference Primary. Additionally, on that same day, Chairman Cole notified the 82 County Party Chairmen that Dr. Wilson had so qualified and instructed them to work with the circuit clerks to make this addition. Accordingly, because of Chairman Cole's letter to the Secretary, the Secretary was duty bound to add Dr. Wilson's name to the ballot. Specifically, the Secretary is charged under Miss. Code Ann. § 23-15-1089 with placing the names of candidates upon the presidential preference primary ballot and has certain responsibilities under the Statewide Election Management System regarding the official ballot

4. An administrative rule of the Secretary of State, Miss. Admin. Code 1-10-6.1, entitled "Adding Contested Candidates to Official Ballot," provides the following:

In the event that a candidate has met the qualification deadline but has not been certified by the appropriate election officials, it is the policy of the Secretary of State's Office to initially include the name of that candidate in the Statewide Elections Management System (SEMS) under the following condition:

Candidates who are known to be in the process of exercising their statutory right of appeal will be given the consideration of proceeding

with the process of inputting the candidate information and building the database.

Candidates who are unknown or who did not exercise their statutory right of appeal will not be included on the ballot. Immediately upon ruling from the appeal process, action must be taken by the appropriate election official to mark the candidate status in SEMS as *Certified* if the ruling is for their name to appear on the ballot, or *Withdrawn* if the name is to be stricken from the ballot. Depending on the timing of the ruling, additional modification and verification may need to be enacted in the GEMS database as well. The integration between the Statewide Elections Management System (SEMS) and the TSX Voting System provides many advantages to both the counties and the State in creating the TSX database and documenting election results. In the ballot build process, it is easier and less time consuming to remove a candidate name from the ballot than it is to add a new candidate name in SEMS and the TSX system after the process of building the ballot is underway. As with all ballot preparation and approval, it is the responsibility of the officials in charge of the election to ensure the accuracy of the final ballot product.

Clearly, the Secretary's own administrative rule contemplates including the candidate's name on the electronic ballot while issues pertaining to his qualifications are resolved. Miss. Code Ann. § 296, relied upon by the Secretary as a statutory deadline, only requires the state party supply the names and addresses of candidates who submitted qualifying papers. The email from the State Party to the Secretary on January 20, 2016, included Dr. Wilson's name. See

Exhibit A to the Secretary's Response. Whether the candidate who filed is determined by the state party to meet the qualifications does not have a specified deadline.

5. Most UOCAVA voting occurs by email or telefax. All such ballots are either hand counted or transposed onto a scannable ballot by county election officials. See UOCAVA exhibits included with this memorandum.

6. The federal district court in Pennsylvania found no violation of UOCAVA where presidential candidate Ralph Nader's name was removed in mid October from the November general election ballot subsequent to absentee ballots cast with Nader's name appearing on it, provided that the obsolete absentee ballots, which were valid at the time they were cast, would be counted. *Reitz v. Rendell*, 2004 WL 2451454 (M.D. Pa. 2004); *U.S. v. Pennsylvania*, 2004 WL 2384999 (M.D. Pa. 2004).

7. The New Jersey Supreme Court held that allowing the Democratic Party's state committee to fill a vacancy created by the withdrawal of its candidate for Senate did not violate the voting rights of overseas military and civilian absentee voters as guaranteed by the UOCAVA, even though some 1,700 absentee ballots containing the name of the withdrawn candidate had already been mailed. *New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178, 814 A.2d 1028 (2002).

8. *Andrews v. Secretary of State*, 235 Md. 106, 200 A.2d 650 (1964), cited by the Secretary of State, is inapposite. In that case the candidates failed to file their certificates of candidacy within time prescribed by statute. Here, there is no question that Dr. Wilson timely filed his candidate qualifying petition.

9. *Esiason v. Washington County Bd. of Elections*, 220 A.D.2d 878, 879, 632 N.Y.S.2d 315 (1995), cited by the Secretary of State, is likewise without authority. In that case there was a statutory deadline for the political party to file nomination certificates. The statute in question expressly stated the failure to file such a certificate “shall be a fatal defect.” However, in Mississippi there is no similar mandatory deadline.

10. Dr. Wilson has stated in his petition that any absentee ballots already cast without his name should be accepted and counted. At the same time having his name added to the electronic official ballot and in turn programmed into the touch screen voting machines would not be difficult to accomplish nearly a month away from the day of the election. Such a remedy would redress the injury to his constitutional rights and the rights of the voters supporting his candidacy without unduly burdening local election officials.

Respectfully submitted, this the 9th day of February, 2016.

DR. WILLIE WILSON, PLAINTIFF

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CERTIFICATE OF SERVICE

I, Samuel L. Begley, attorney for appellant, Dr. Willie Wilson, certify that I have this day filed this the with the clerk of this Court and have served a copy of this by United States mail with postage prepaid on the following persons at these addresses:

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Judge Winston L. Kidd
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This the 3rd day of February, 2016.

s/ Samuel L. Begley
Samuel L. Begley (MS Bar # 2315)